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CHE WAN LUKMAN CHE WAN MANSOR

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS

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HIGH COURT MALAYA, KUALA LUMPUR
AMELIA TEE ABDULLAH J
[CRIMINAL APPLICATION NO: 44-151-08-2012]
18 OCTOBER 2012

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ADMINISTRATIVE LAW: *Remedies - Habeas corpus - Procedural non-compliance - Whether applicant duly served with documents - Whether there was breach of r. 5(1) Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 - Whether arrest and*

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detention of applicant done in accordance with s. 3(2)(c) Dangerous Drugs (Special Preventive Measures) Act 1985 - Failure to cross out words "pagi/petang" - Whether gave rise to ambiguity as to time of service - Whether Inquiry Officer properly appointed - Whether applicant's continued detention rendered unlawful

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The applicant was arrested by the police on 17 April 2012 at 12.05pm at a beach resort in Kuala Terengganu under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') and detained until 30 April 2012 under s. 3(2)(c) and

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3(2)(d) of the Act for purposes of investigation. After considering the reports submitted under ss. 3(3) and 5(4) of the Act, the Deputy Minister of Home Affairs ('the first respondent') issued a detention order under s. 6(1) of the Act directing the applicant to be detained at a Pusat Pemulihan Akhlak for a period of two

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years. On 21 June 2012, the Advisory Board ('the Board') received the applicant's representation dated 15 June 2012 (Form I). On 26 June 2012, the Board issued a notice of hearing of representation (Form II) notifying that the Board would be sitting on 4 July 2012. Form II was served on the applicant on 27 June

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2012. The hearing on 4 July 2012 was adjourned as the applicant wanted to engage a lawyer. On the same day, a fresh Form II was issued and served on the applicant to inform of the next hearing date on 31 July 2012. The Board, after considering the representations of the applicant, had forwarded its recommendations

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to the Yang Di-Pertuan Agong pursuant to s. 10(1) of the Act. After considering the recommendations of the Board, His Majesty

the Yang Di-Pertuan Agong had agreed with the detention order made by the first respondent under s. 6(1) of the Act. The applicant thus made an application for a writ of *habeas corpus* on the grounds that his detention was unlawful, submitting these grounds, *ie,* (i) that there was non-compliance with r. 5(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the Rules') in that he was not served with the documents at the Pusat Pemulihan Akhlak in accordance with the Rules; (ii) neither the affidavit of SAC Jamaludin nor the affidavit of the Deputy Minister made mention of the time when the report was received by the Deputy Minister and in light of this deficiency, there was non-compliance with s. 3(2)(c) of the Act; (iii) that there was ambiguity as to time of service and non-compliance with s. 9 of the Act and r. 3 of the Rules; (iv) that there was non-compliance with s. 5 of the Act on the appointment of one Sarihan as the Inquiry Officer on the grounds that as a Deputy Public Prosecutor whose work was closely connected with police investigations and the prosecution of persons in court, he would not be an independent Inquiry Officer able to impartially carry out his duties and responsibilities under the Act to conduct the inquiry and to submit his report to the Minister.

Held (granting applicant's application for writ of *habeas corpus*):

(1) The purpose behind the practice of obtaining an acknowledgment is not for the purpose of compliance with any rule on obtaining an acknowledgment but for the purpose of proving that there was service of the requisite notices on the detained person. Even to the naked eye, the two alleged signatures on the two copies of Form II dated 27 June 2012 and 4 July 2012 were completely different. Since the applicant admitted that the signature on the Form II dated 27 June 2012, which was consistent with his other signatures, was his signature and that the different signature on the Form II dated 4 July 2012 was not his signature, and in the absence of any explanation as to how there could have been this difference, the applicant's complaint that the signature on the Form II dated 4 July 2012 was not his signature and that he had not acknowledged receipt of the said Form was accepted. In respect of this, a serious doubt had arisen as to whether the

applicant was in fact served with the Form II dated 4 July 2012. Thus, there had been a breach of the mandatory requirement of r. 5(1) of the Rules. (paras 8-9 & 15-16)

(2) SAC Jamaludin's affidavit in reply stated that he had reported to the Deputy Minister on 30 April 2012 at 10.05am. The time of the reporting was relevant for the purpose of determining whether the reporting was done within 14 days as provided under the Act. There was nothing clear and obvious in any of the affidavits filed herein or any exhibits annexed to any of the affidavits and before this court which would give rise to a different and contrary meaning. In the circumstances, the court was satisfied that SAC Jamaludin had carried out his responsibility of reporting the circumstances of the arrest and detention of the applicant to the Deputy Minister under s. 3(2)(c) of the Act. (para 22)

(3) It was pointed out by the applicant that on the second page of the detention order attached to the Deputy Minister's affidavit, the time given for the service of the documents was stated as 1115 where none of the words "pagi/petang/malam" had been crossed out. The applicant argued that it was thus unclear as to whether the time of service was 11.15am or 11.15pm. However, in light of the fact that there was no suggestion that the difference between whether the service of the documents was effected at 11.15am or 11.15pm would have any effect on whether the detention had exceeded 60 days, the failure to cross out the words "pagi/petang" did not give rise to any ambiguity since the time of service and explanation of the documents at 11.15pm were properly deposed by the relevant inspectors in their respective affidavits. (paras 25 & 26)

(4) Although there was a challenge as to the appointment of the Inquiry Officer, the challenge was in relation to the Inquiry Officer's alleged refusal to accept the applicant's evidence and the suggestion that he had acted as a rubber stamp for the police. This was insufficient as a challenge regarding the independence of the Inquiry Officer by virtue of his alleged link with the Attorney General's Chambers and accordingly the court did not propose to deal with this issue on the ground that it was not properly raised. (para 33)

(5) Although the court found no merits in the second, third and fourth issues raised, there was however a breach of the mandatory requirement of r. 5(1) of the Rules. In light of this procedural non-compliance, the applicant's continued detention was thus rendered unlawful. As such, the applicant's application for a writ of *habeas corpus* was granted and the applicant was to be set at liberty forthwith. (para 35)

Case(s) referred to:

Aw Ngoh Leang v. Inspector General of Police & 2 Ors [1993] 1 CLJ 373 SC ***(refd)***

Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2006] 4 CLJ 687 FC ***(refd)***

Parasuraman Velu v. Ketua Polis Negara, Malaysia & 2 Ors [2006] 1 LNS 248 HC ***(refd)***

Sim Kim Fatt v. Dato' Fu Ah Kiow [2009] MLJU 3 ***(refd)***

SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors [2009] 6 CLJ 705 FC ***(refd)***

Tan Hoon Seng & Anor v. Minister for Home Affairs & Anor [1990] 1 CLJ 423; [1990] 1 CLJ (Rep) 271 SC ***(refd)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), (2)(c), (2)(d), (3), 5(4), 6(1), 9, 10(1)

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, rr. 3, 5(1)

For the applicant - N Sivananthan (Tina Ong with him); M/s Sivananthan
For the respondents - Natrah Fareha; FC

Reported by Suhainah Wahiduddin

JUDGMENT

Amelia Tee Abdullah J:

[1] *Vide* a notice of motion dated 30 August 2012, the applicant, Che Wan Lukman bin Che Wan Mansor, has made an application for a writ of *habeas corpus* on the grounds that his detention under the Dangerous Drugs (Special Preventive Measures) Act 1985 is unlawful.

[2] The applicant was arrested by the police on 17 April 2012 at 1205 hrs at room no. 212, Gem Beach Resort, 21021 Batu Rakit, Kuala Terengganu, Terengganu under s. 3(1) of the

Dangerous Drugs (Special Preventive Measures) Act 1985 (hereinafter referred to as "the Act") and detained until 30 April 2012 under s. 3(2)(c) and 3(2)(d) of the Act for purposes of investigation. On 30 April 2012, the 1st respondent, the Deputy Minister of Home Affairs, received a report pertaining to the circumstances of the arrest and detention of the applicant from Senior Assistant Commissioner Jamaludin bin Kudin. Subsequently, on 22 May 2012, the 1st respondent received a report of the investigation submitted by Inspector Azizan bin Aziz under s. 3(3) of the Act and on 14 June 2012 a report from the Inquiry Officer Sarihan bin Abdul Shatar under s. 5(4) of the Act.

[3] After considering the reports submitted under ss. 3(3) and 5(4) of the Act, the 1st respondent issued a detention order dated 15 June 2012 under s. 6(1) of the Act directing the applicant to be detained at Pusat Pemulihan Akhlak, Machang, Kelantan for a period of two (2) years.

[4] On 21 June 2012, the Advisory Board ("the Board") received the applicant's representation dated 15 June 2012 (Form I). On 26 June 2012, the board issued a Notice of Hearing of Representation (Form II) notifying that the board would be sitting on 4 July 2012. Form II was served on the applicant on 27 June 2012 by Murali a/l Arumugon. The hearing on 4 July 2012 was adjourned as the applicant wanted to engage a lawyer. On the same day, a fresh Form II was issued and served on the applicant to inform of the next hearing date on 31 July 2012.

[5] On 31 July 2012, the applicant and his counsel, Dato' Sivananthan and Ms Vinodhini from M/s Sivananthan were present at the hearing. The Board, after considering the representations of the applicant, had on 12 August 2012 forwarded its recommendations to the Yang di-Pertuan Agong pursuant to s. 10(1) of the Act. After considering the recommendations of the board, His Majesty the Yang di-Pertuan Agong had agreed with the detention order made by the 1st respondent under s. 6(1) of the Act.

[6] In its submissions before the court, the applicant raises four issues. The court will deal with each in turn.

Non-Compliance With r. 5(1) Of The Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987

[7] The first issue raised by the applicant is the alleged non-compliance with r. 5(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ("the Rules"). In para. 25(j) of his affidavit-in-support, the applicant had averred that there is non-compliance with the Rules in that he was not served with documents at the Pusat Pemulihan Akhlak Machang, Kelantan in accordance with the rules.

[8] Reference is made by the applicant to the affidavit-in-reply of Raja Hasyimah bt Raja Bongsu, the secretary of the Board, affirmed on 24 September 2012 (encl. 7). Learned counsel for the applicant had drawn the court's attention to the alleged signatures of the applicant on the two copies of Form II annexed as exh. "RH2". The court notes and agrees that even to the naked eye, the two alleged signatures on the forms dated 27 June 2012 and 4 July 2012 are completely different.

[9] The applicant submits that the signature on the Form II dated 27 June 2012 is indeed the signature of the applicant. That signature is the same as the signature of the applicant on the Form I dated 26 June 2012 as well as the acknowledgement of receipt of the detention order under s. 6(1) in exh. "CWL1" attached to the applicant's affidavit-in-support (encl. 3). However, the alleged signature of the appellant on the Form II dated 4 July 2012 has absolutely no similarity with the rest of the applicant's other signatures.

[10] In this regard, the respondents rely on the affidavit of Murali a/l Arumugon (encl. 11), a warden at the Pusat Pemulihan Akhlak Machang, to the effect that on various dates he had been directed to serve various Notices of Hearing of Representation in Form II to the applicant. He states that he had duly read and explained to the applicant in simple Bahasa Malaysia about the scheduled board sittings on 4 July 2012 and 31 July 2012 for the purpose of hearing his representation in relation to the detention order against him. He had also read and explained to the applicant about his right to make representations to the board and that he

could either appear by himself or be represented by a counsel at the representation hearing. And in para. 8 of his affidavit, Murali a/l Arumugon has affirmed that:

> ... Pemohon mengakui telah menerima salinan dan memahami isi kandungan kedua-dua Borang II tersebut dengan menurunkan tandatangan beliau di atas kedua-dua Borang II tersebut.

[11] *Vide* the affidavit-in-reply of the applicant's counsel (encl. 16) filed on behalf of the applicant, the applicant has vehemently disputed the veracity of Murali's statement as regards to the service of the Form II dated 4 July 2012. He has also categorically denied that the alleged signature of acknowledgment of receipt on the Form II is his signature.

[12] In considering whether there has been a non-compliance with r. 5(1) of the Rules, the court has considered whether the procedural requirement stated in r. 5(1) of the Rules is mandatory or directory in nature. The court agrees with the decision in *Sim Kim Fatt v. Dato' Fu Ah Kiow* [2009] MLJU 3 where the court held as follows:

> ... the question for determination is whether the procedural requirement stipulated in r. 5(1) DDR 1987 is mandatory or directory in nature. In this instance the operative word in r. 5(1) DDR 1987 is "shall". Whenever a statute declares that a thing "shall" be done, that natural and proper meaning is that a peremptory mandate is enjoined. But where the thing has reference to (a) the time or formality of completing any public act, not being a step in a litigation, or accusation; or (b) the time or formality of creating an executed contract whereof the benefit has been, or but for their own act might be, received by individuals or private companies or private corporations, the enactment will generally be regarded as merely directory, unless there be words making the thing done void if not done in accordance with the prescribed requirements (see *Stroud's Judicial Dictionary Of Words And Phrases* 6th edn) ...
>
> The DDR 1987 is promulgated under the DDA 1985. The DDA 1985 is a statute relating to preventive detention. The DDR 1987 sets out the procedure for, *inter alia*, making representations by a detained person, the hearing of representation, procedure for review of detention and restriction order. As a piece of legislation relating to preventive detention the provisions of the DDR 1987 must be interpreted strictly so as to require rigid and meticulous

compliance therewith. In case of doubt the Court should lean in favour of the subject. (see *Tan Hoon Seng v. Minister of Home Affairs* [1990] 1 CLJ (Rep) 271 SC; *Rajoo Ramasamy v. Minister of Home Affairs and Anor* [1990] 1 CLJ (Rep) 256 SC). It is the Court's view that r. 5(1) DDR 1987 is mandatory and not merely directory. In fact, the respondent served a Form II on the applicant in respect of the first hearing on 9.1.2007. When the hearing was adjourned to 22.1.2007 the respondents accordingly served a fresh Form II. The respondents complied with r. 5(1) on the two occasions. No explanation was proffered by the respondents for their failure to serve a Form II in respect of the hearing on 16.2.2007. The fact that the appli cant may have been informed verbally is, in the face of the mandatory procedural requirement, unjustifiable. On this ground the Court finds that there has been a serious breach of the mandatory requirement of r. 5(1), the effect of which is to render the applicant's continued detention unlawful. Once a breach of a mandatory statutory requirement is established the fact that the applicant was not prejudiced is not relevant. The risk of prejudice is enough.

[13] Learned counsel for the applicant has also cited the case of *Parasuraman Velu v. Ketua Polis Negara, Malaysia & 2 Ors* [2006] 1 LNS 248, the facts of which would appear to be similar to the facts of our present case. In that case, whilst Form I contained the signature and thumb print of the applicant, Form II contained no thumb print but a signature which was substantially different from the applicant's signature in Form I. In that case, the court found that the facts gave rise to a doubt as to whether Form II was ever served on the applicant and whether he knew of the contents of the said form.

[14] The court notes the submission of the learned Federal Counsel that there is nothing in r. 5(1) which states that an acknowledgement from the applicant has to be obtained. That may well be so. However, the purpose behind the practice of obtaining an acknowledgement is not for the purpose of compliance with any rule on obtaining an acknowledgment but for the purpose of proving that there was service of the requisite notices on the detained person.

[15] The court is of the considered view that the fact of the existence of two quite distinct and different signatures on the two sets of Form II would point to one of them not being the genuine signature of the applicant. Since the applicant has admitted that the signature on the Form II dated 27 June 2012, which is consistent with his other signatures, is his signature and that the

different signature on the Form II dated 4 July 2012 is not his signature, and in the absence of any explanation as to how there could have been this difference, the court has no hesitation in accepting the applicant's complaint that the signature on the Form II dated 4 July 2012 is not his signature and that he had not acknowledged receipt of the said form.

[16] In respect of this issue and for the reasons afore-stated, the court is satisfied that a serious doubt has arisen as to whether the applicant was in fact served with the Form II dated 4 July 2012. The court thus finds that there has been a breach of the mandatory requirement of r. 5(1).

Non-compliance With s. 3(2)(c) Of The Dangerous Drugs (Special Preventive Measures) Act 1985

[17] The next issue relates to an alleged non-compliance with s. 3(2)(c) of the Act. Section 3(2)(c) of the Act reads as follows:

> (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection (1) of section 6:
>
> Provided that:
>
> (a) ...
>
> (b) ...
>
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

[18] The applicant draws the court's attention to para. 7 of SAC Jamaludin bin Kudin's affidavit-in-reply (encl. 6) in which he states that:

> Pada 30-04-2012 jam 10.05 pagi, saya telah menyediakan laporan hal keadaan penangkapan dan penahanan tersebut serta melaporkan kepada Timbalan Menteri Dalam Negeri pada masa material untuk tujuan lanjutan tempoh penahanan seksyen 3(2)(c) Akta. Laporan

> hal keadaan penangkapan dan penahanan tersebut juga saya serahkan sendiri kepada Timbalan Menteri Dalam Negeri, DATO' LEE CHEE LEONG.

[19] According to exh. "JK2" attached to encl. 6, the date and time of the preparation of the report by SAC Jamaludin is 30 April 2012 at "1005 Hrs". The applicant contends that since the applicant was arrested on 17 April 2012 at 12.05 noon, the 14 days allowed for his detention under s. 3(2)(c) would expire on 30 April 2012 at 12.05 noon. As such, it is imperative that the time when the report of SAC Jamaludin was reported to the Deputy Minister should have been made known.

[20] The court notes that neither the affidavit of SAC Jamaludin (encl. 6) nor the affidavit of the Deputy Minister (encl. 5) makes mention of the time when the report was received by the Deputy Minister. In light of this deficiency, the applicant submits that there has been non-compliance with s. 3(2)(c) of the Act. Reliance was placed by the applicant on the case of *Tan Hoon Seng & Anor v. Minister for Home Affairs & Anor* [1990] 1 CLJ 423; [1990] 1 CLJ (Rep) 271 where the Supreme Court held that the law on preventive detention must be construed strictly and in the case of doubt the court should lean in favour of the subject. In the case of *Aw Ngoh Leang v. Inspector General of Police & 2 Ors* [1993] 1 CLJ 373, the Supreme Court held that any disobedience of the mandatory requirements for the protection of the rights of a detained person to seek his release would vitiate any order of detention made, even if no real prejudice has ensued to the detainee. Lastly, in the case of *SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors* [2009] 6 CLJ 705, the Federal Court, in allowing a writ of *habeas corpus* to issue held as follows:

> When considering whether a restraint upon liberty is in accordance with law it is to the evidence furnished by the detaining authority that a court must turn in the usual way. And where that evidence is by way of affidavit the court is not spared the task of subjecting its contents to the same tests as in any other case, **if not to stricter scrutiny** since the case concerns the violation of a constitutionally guaranteed protection. (emphasis added)

[21] The learned Federal Counsel has submitted that para. 7 of SAC Jamaludin's affidavit-in-reply states that he had reported to the Deputy Minister on 30 April 2012 at 10.05am. And that this is sufficient to show that SAC Jamaludin had carried out his

responsibility of reporting the circumstances of the arrest and detention of the applicant to the Deputy Minister under s. 3(2)(c) of the Act.

[22] After a careful scrutiny of the relevant affidavits and relevant exhibits annexed thereto, the court is satisfied that SAC Jamaludin had reported the circumstances of the arrest and detention of the applicant to the Deputy Minister. However, this begs the question of when the said reporting was done. The time of the reporting is relevant for the purpose of determining whether the reporting was done within the 14 days as provided under the Act. To this end, the court has scrutinised para. 7 of encl. 6 and the words therein. The court is satisfied that para. 7 in its ordinary meaning would mean that the Deputy Minister had been served with the report at 10.05am on 30 April 2012. The court is satisfied that there is nothing clear and obvious in any of the affidavits filed in this case or any exhibits annexed to any of the affidavits and now before the court which would give rise to a different and contrary meaning. That being so, there is no other inference more favourable to the applicant for the court to consider.

[23] In the circumstances, in relation to this second issue, the court is satisfied that there has been no non-compliance with s. 3(2)(c) of the Act.

Non-Compliance With s. 9 Of The Dangerous Drugs (Special Preventive Measures) Act 1985 And r. 3 Of The Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987

[24] The 3rd issue raised by the applicant relates to an alleged contravention of s. 9 of the Act and r. 3 of the Rules. The applicant submits that there has been non-compliance of procedure in respect of these two provisions. Reference was made to para. 4 of the affidavit-in-reply of Inspector Shahrul Effendy bin Mohammad Rahhim (encl. 13) in which he affirms that on 15 June 2012 at 11.15pm at the Kuala Terengganu Police Lock-up, he had served on the applicant a copy of the detention order, a statement in writing of the grounds on which the order was made, a statement of the allegations of fact on which the order was based and three copies of Form I. Inspector Shahrul Effendy's statement is corroborated by the affidavit of Sergeant Aziz bin Mohamad (encl. 14) where at para. 5 he confirms that at 11.15pm

on 15 June 2012 at the Kuala Terengganu Police Lock-up, he was directed by Inspector Shahrul Effendy to explain to the applicant in Bahasa Malaysia the contents of all the afore-stated documents which had been served on the applicant.

[25] However, the applicant points out that on the second page of the detention order at exh. "DLCL1" attached to the Deputy Minister's affidavit (encl. 5), the time given for the service of the documents is stated as 1115 where none of the words "pagi/petang/malam" had been crossed out. The applicant argues that it is thus unclear as to whether the time of service is 11.15am or 11.15pm.

[26] The court has duly considered whether the failure to cross out any of the words "pagi/petang/malam" amounts to a procedural non-compliance with the Act or the rules. In this case, the court is satisfied both as to the service of the documents on the applicant as well as the fact that the contents of the documents and the applicants rights were all duly explained to him. In light of the fact that there is no suggestion that the difference between whether the service of the documents were effected at 11.15am or 11.15pm would have any effect on whether the detention had exceeded 60 days, the court is of the considered view that the failure to cross out the words "pagi/petang" did not give rise to any ambiguity since the time of service and explanation of the documents at 11.15pm were properly deposed by both Inspector Shahrul Effendy as well as Sergeant Aziz bin Mohamad in their respective affidavits.

[27] Thus, on this issue, the court finds that there is no non-compliance with s. 9 of the Act and r. 3 of the Rules.

Non-compliance With s. 5 Of The Dangerous Drugs (Special Preventive Measures) Act 1985

[28] The final issue raised by the applicant relates to the alleged contravention of s. 5 of the Act. This issue revolves around the fact that in the affidavit-in-reply of Sarihan bin Abdul Shatar (encl. 8), he is stated to have an address at "Pejabat Timbalan Pendakwaraya Kuala Lumpur, Unit Pendakwaan, Tingkat 7, (Sayap Kanan) Wisma Chase Perdana, Off Jalan Semantan, Damansara Heights, 50490 Kuala Lumpur".

[29] The applicant submits that from the above it would appear that at the material time of the investigation by the deponent, Sarihan bin Abdul Shatar, he was not just appointed as an Inquiry Officer by the Minister under s. 5 of the Act but was also, at the same time, a Deputy Public Prosecutor in the Attorney General's Chambers as evidenced by his address.

[30] In light of the above, the applicant questions the appointment of Sarihan as an Inquiry Officer on the grounds that as a Deputy Public Prosecutor whose work is closely connected with police investigations and the prosecution of persons in court, he would not be an independent Inquiry Officer able to impartially carry out his duties and responsibilities under the Act to conduct the Inquiry and to submit his report to the Minister.

[31] In the Federal Court case of *Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 4 CLJ 687, one of the issues that came up before the court was the absence of evidence on record as to the qualifications of the Inquiry Officer. The court held that:

> The requirement under s. 5(1) of the Act for the inquiry officer to be a non-police officer who is legally qualified is to ensure that the person who conducts the inquiry is one who is independent and has sufficient knowledge of the law to prepare a proper report for consideration by the Minister. Again there is no evidence on record to show compliance with this requirement. There is therefore a breach in relation to compliance with s. 5 of the Act.

[32] On this issue, the respondents submit that this issue was not raised by the applicant in either his affidavit-in-support or in the affidavit-in-reply and as such the respondents had no opportunity to specifically clarify the actual position. This is disputed by the applicant who points out that the issue about the s. 3(2)(c) report was raised in para. 11 of encl. 3.

[33] The court has carefully perused the said para. 11 and even para. 10 which makes specific reference to the Inquiry Officer. However, the court finds that although there is a challenge in para. 10 as to the appointment of the Inquiry Officer, the challenge was in relation to the Inquiry Officer's alleged refusal to accept the applicant's evidence and the suggestion that he had acted as a rubber stamp for the police. The court finds that this

is insufficient as a challenge regarding the independence of the Inquiry Officer by virtue of his alleged link with the Attorney General's Chambers and accordingly the court does not propose to deal with this issue on the ground that it was not properly raised.

[34] The court will state here that challenges by detained persons relating to the legality of their detention should, as far as possible, be as specific as possible in order to enable respondents to be able to adequately respond to the challenges. They should not be couched in such broad and general terms that the very nature of the complaint is lost. Only when all the facts are brought before the court will the court be able to properly determine whether there has been any procedural non-compliance with the Act or Rules which would render the continued detention of a detained person unlawful.

Conclusion

[35] Although the court has found no merits in issues 2, 3 and 4, however the court has found that there has been a breach of the mandatory requirement of r. 5(1) of the Rules. In light of this procedural non-compliance, the court finds that there has been a serious breach of the mandatory requirement of r. 5(1) of the Rules thus rendering the applicant's continued detention to be unlawful. As such, the applicant's application for a writ of *habeas corpus* is granted and the applicant is to be set at liberty forthwith.